

METSO SALES TERMS & CONDITIONS (U.S.)

1. "Metso" means Metso Minerals Industries, Inc., or a Metso corporate affiliate identified in the Proposal. "Proposal" means the Metso proposal, quotation, estimate or other Metso supplied documents and all addenda thereto, including drawings and specifications, that describe a scope of supply. The provisions of this Metso Sales Terms and Conditions document are a part of the Proposal, except to the limited extent specifically provided elsewhere in the Proposal. "Agreement" means the Proposal and any other term, condition, or provision if and to the extent agreed to in writing. Metso. "Product(s)" means the Metso supplied equipment and related parts, software, services or documentation as described in the Proposal.
2. BUYER'S ACCEPTANCE OF THE PROPOSAL IS EXPRESSLY LIMITED TO AND CONDITIONED UPON ACCEPTANCE ALL OF THE PROVISIONS THEREOF, INCLUDING THESE SALES TERMS AND CONDITIONS. IF A METSO PROPOSAL IS CONSTRUED AS AN ACCEPTANCE OF BUYER'S OFFER OR AS A CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED ON THE BUYER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN.
3. **PRICE & PAYMENT:** (A) Prices and payments are in U.S. Dollars and do not include any sales, use or excise taxes, customs duties or similar charges or fees. If not specifically stated elsewhere in the Proposal, Prices do not include the services of any representative of Metso including, but not limited to the assistance in the installation, inspection or startup of the Products. Pro rata payment are due for partial shipments. If shipment is delayed by Buyer, the date the shipment is ready shall be deemed to be the shipment date for payment purposes. If Buyer fails to pay by the due date, Metso shall be entitled to interest at a rate of 1.5% per month not to exceed the legal maximum. The Proposal is subject to credit approval and Metso's right to require an irrevocable letter of credit established in acceptable form with a prime U.S. bank. (B) For sales under \$50,000 payment shall be net cash 30 days after shipment. For sales between \$50,000 and \$150,000, payment shall be 15% down payment due at time of Buyer purchase order, placement with remaining 85% net cash 30 days after shipment. For sales over \$150,000, payment shall be progress milestones as described elsewhere in the Proposal. (C) Metso shall have the right to suspend its performance of the Agreement if Buyer fails to pay on any due date.
4. **DELIVERY and TITLE:** Delivery shall be defined by an applicable Incoterm. Partial deliveries and transshipments are permitted. All delivery dates are approximate. Title shall transfer upon shipment. If shipment delayed by Buyer, Metso may ship and/or store the Products at Buyer's risk and expense.
5. **REJECTION:** Any rejection of Products must be made by the Buyer in writing within a reasonable time after delivery but in no event later than thirty (30) business days after delivery. Failure to make such claim within the stated period shall constitute an irrevocable acceptance of the Products.
6. **LIMITED WARRANTY:** Except as provided herein, Metso warrants that Products will be free of defects in workmanship and material. This warranty covers the Buyer only and is not transferable. EXCEPT FOR WARRANTY OF TITLE, THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, GUARANTEES AND THE LIKE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AND CONSTITUTES THE ONLY WARRANTY OF METSO WITH RESPECT TO THE PRODUCTS.
7. **EXCLUSIONS TO WARRANTY:** METSO MAKES NO WARRANTIES AS TO PERFORMANCE OR PRODUCTION, NOR AS TO WEAR PARTS OR CONSUMABLES, NOR AS TO ANY SEPARATELY LISTED ITEM OF THE PRODUCT(S) WHICH IS NOT MANUFACTURED BY METSO, which latter item shall be covered only by the manufacturer's warranty, if any. Metso and its suppliers shall have no obligation under the limited warranty as to any Product which has been improperly stored or handled, or which has not been installed, operated or maintained according to Metso or supplier furnished manuals or other instructions or is operated during the warranty remedy period with other than genuine Metso parts.
8. **LIMITED WARRANTY REMEDY:** (A) If, within twelve (12) months from date of delivery, but not more than eighteen (18) months from date that Buyer is advised that Products are ready for shipment, Buyer discovers that a Product was not as warranted and promptly notifies Metso in writing thereof, Metso shall cause the repair or replacement of the defective Product or part thereof. Buyer shall assume all responsibility and expense for removal, reinstallation, and freight in connection with replacement parts furnished by Metso. Buyer's entitlement to warranty remedies is contingent upon Buyer's cooperation in permitting Metso to investigate the defect and in returning replaced parts to Metso, if requested, at Metso's expense. The warranty period shall not be extended by the repair or replacement, nor shall there be a separate remedy period for any replacement Product or part. The warranty remedy period for Metso spare parts (not replacement parts furnished under warranty) is six (6) months from date of delivery. (B) If, after a reasonable number of repeated efforts, Metso determines that it is unable to repair or replace a defective Product or part, Buyer shall, at Metso's option, return the Product (or part thereof, if such does not materially impair the value of the remaining Product) to Metso at Buyer's expense and Metso shall return the applicable purchase price as Buyer's entire and exclusive remedy. (C) THE REMEDIES EXPRESSLY PROVIDED HEREIN ARE BUYER'S EXCLUSIVE REMEDY AGAINST METSO AND ITS SUPPLIERS UNDER THE AGREEMENT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE. (D) If the foregoing disclaimer of additional warranties is not given full force and effect, any resulting additional warranty shall be limited in duration to the above warranty remedy periods and be otherwise subject to and limited by these sales terms and conditions.
9. **BUYER'S PERMITS, APPROVALS AND DATA:** Buyer shall provide and pay for all permits and licenses required for the installation and operation of the Products. Timely performance by Metso is contingent upon Buyer's supplying to Metso, when needed, all required technical information and data, including drawing approval, and all required commercial documentation.
10. **FOUNDATIONS:** Buyer shall be solely responsible for the design and construction of foundations. Any plans furnished by Metso shall be considered examples only, and Metso assumes no responsibility for foundation adequacy and disclaims any liability arising out of inadequate foundations and any effect on Products.
11. **BUYER EMPLOYEES AND PREMISES:** Compliance with OSHA, MSHA or similar federal, state or local laws during any installation, operation, or use of the Product(s) is the sole responsibility of Buyer.
12. **NUCLEAR AND HAZARDOUS WASTE USES:** Products shall not be used in or in connection with a nuclear or hazardous waste application, and Buyer agrees to indemnify, defend, and hold Metso harmless from all loss, cost, damage, expense and other liability whatsoever from such use. Buyer also acknowledges its responsibility for the disposal of any Products (including any computer or other electronic equipment or components) in accordance with applicable law, including any recycling, reporting or record keeping requirements.
13. **RELIEF.** If Metso is hindered or suffers delay in performance due to any cause beyond its reasonable control, including but not limited to war or other hostilities or civil unrest, act or failure to act of government, lack or loss of services or access (such as utilities or roads), act of God, including fire, flood, earthquake, landslide, or extreme weather event, strike or other labor trouble, or any sabotage, the time of performance shall be extended a period of time equal to the period of the resulting inability to perform and its consequences. In no event shall Metso have liability to Buyer arising out of any such delays. If the delay arising under this section is more than 180 days, either party has the right to terminate the Agreement and the parties' respective obligations shall be equitably adjusted. Metso shall be reimbursed and for any additional costs it reasonably incurs as a direct result of Buyer's delay or inability or failure to perform.
14. **INTELLECTUAL PROPERTY.** (A) Metso shall pay costs and damages finally awarded to the extent based upon a finding by a U.S. court that the design or construction of a Product as furnished infringes a U.S. patent or copyright (except infringement occurring as a result of incorporating a design or modification at Buyer's request or Buyer's use of the Products in a manner contrary to the Agreement or Metso's manuals or instructions), provided that Buyer promptly notifies Metso in writing of any claim of such infringement, and Metso is given the right at its expense to settle and defend and control the defense of any such claim. THIS SECTION SETS FORTH METSO'S EXCLUSIVE LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY. (B) All drawings, specifications, data, software, firmware, manuals, instructions, documentation or other works of authorship furnished by Metso are copyrighted property of Metso or its suppliers, and are to be used by Buyer only for the purpose of installing, operating, maintaining and repairing the Products. Such works and data may not be otherwise used or reproduced or disclosed. (C) Metso or its suppliers retain all right, title and interest in and to its and their inventions, discoveries, concepts, ideas or other intellectual property embodied in or related to its Products.
15. **LIMITATION OF LIABILITY.**

(A) NEITHER METSO NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT (INCLUDING BREACH OF REPRESENTATION OR WARRANTY) OR IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR FOR INFRINGEMENT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, PRODUCTION, REVENUE OR PROFIT, OR FOR COST OF CAPITAL, OR FOR INCREASED COSTS OF OPERATION OR MAINTENANCE, OR FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT ANY OF THE FOREGOING DAMAGES ARE FORESEEABLE. In Agreements where Metso does not have responsibility for installation and erection of the equipment, all costs related to the disassembly, assembly reinstallation and erection shall be deemed to be excluded herein.

(B) IN ANY EVENT, METSO'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO 25% OF THE PURCHASE PRICE TO THE EXTENT PAID BY BUYER OR ANY SUCH OTHER LIABILITY CAP AS MAY BE PROVIDED ELSEWHERE IN THE AGREEMENT, WHICHEVER IS LESS.

(C) The limitations of liability contained in this section 15 shall be effective without regard to (i) Metso's performance or failure or delay of performance under any other term or condition of this Agreement, including any warranty or remedy or (ii) the invalidity or unenforceability of any other limitation, disclaimer or exclusion of any warranty, remedy or other right.
16. **SECURITY INTEREST AND INSURANCE:** Metso retains and Buyer grants to Metso a security interest in the Product(s) and proceeds and any replacement regardless of mode of attachment to realty or other property to secure payment of all amounts due to Metso. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Metso's interest by adequately insuring the Product against loss or damage from any external cause with Metso named as insured or additionally insured.
17. **CHANGES AND SUBSTITUTIONS:** (A) Metso reserves the right to make, at no cost to Buyer, such changes in materials or designs that are, in Metso's judgment, reasonable and necessary for the proper operation and life of the Products. Metso further reserves the right to make improvements to subsequently supplied Products without imposing an obligation on itself to modify its previously supplied products. (B) Whenever a material, piece of equipment or other item is identified by brand name, manufacturer's or vendors' name, trademark, catalog number, etc ("Brand"), it is intended merely to establish a general quality standard and not to require the use of the Branded item. Metso shall have the option to provide items that otherwise conforms to the applicable standard, although the Buyer shall have the option to pay any increased cost of the Brand item.
18. **NONCANCELLATION:** Buyer acknowledges that the Proposal does not contain any Buyer right to terminate any Agreement for convenience or to suspend performance thereunder without cause (i.e., applicable Metso breach).
19. **ASSIGNMENT:** The Proposal and any Agreement and any rights and obligations thereunder may not be assigned or delegated by either party, except with written consent of the parties, except that Metso may so assign or delegate to a corporate affiliate owned or controlled by Metso Corporation, a Finnish corporation.
20. **APPLICABLE LAW, DISPUTE RESOLUTION AND SEVERABILITY:** (a) This Agreement shall be governed by, enforced and disputes resolved in accordance with the substantive laws of the State of Delaware, USA. (b) All disputes arising out of or in connection with the Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall take place in Chicago, Illinois, USA, in the English language. The arbitration hearings shall last no longer than two weeks and the arbitrators shall issue a reasoned written opinion. The arbitrator(s) shall have no authority to award punitive damages or other damages not permitted under this Agreement. Judgment upon such award may be entered in any court having jurisdiction. Arbitrator fees and costs shall be equally shared, but otherwise the parties are responsible for their own legal fees, costs and expenses. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for preliminary injunctive or other interim or equitable relief to prevent disclosure of confidential information or misappropriation or other misuse of intellectual property pending final determination in arbitration. (c) Should any provision or portion thereof be held invalid or unenforceable, the validity and enforceability of the remaining provisions of the Agreement will not be affected.